FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 307

ISBRANDTSEN-MOLLER CO., INC.,
Appellant,

vs.

THE UNITED STATES OF AMERICA, *et al.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

STATEMENT AS TO JURISDICTION.

[illegible]
Counsel for Appellant.

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UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

ISBRANDTSEN-MOLLER CO., INC.,

Appellant,

against

THE UNITED STATES OF AMERICA, THE DEPARTMENT OF COMMERCE OF THE UNITED STATES, THE SHIPPING BOARD BUREAU OF THE DEPARTMENT OF COMMERCE OF THE UNITED STATES, DANIEL C. ROPER, INDIVIDUALLY AND AS SECRETARY OF COMMERCE OF THE UNITED STATES; JAMES C. PEACOCK, INDIVIDUALLY AND AS DIRECTOR OF THE SHIPPING BOARD BUREAU OF THE DEPARTMENT OF COMMERCE OF THE UNITED STATES, AND LAMAR HARDY, INDIVIDUALLY AND AS UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK,

Appellees.

STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

The appellant respectfully states as follows:

a. The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States on this appeal is Section 31 of the Shipping Act 1916 (U. S. Code, Title 46, Sec. 830) and U. S. Code, Title 26, Secs. 46 and 47.

b. The order, the validity of which is involved, is the order of November 18, 1935, of the defendant Daniel C.

Roper, Secretary of Commerce, purporting to act as the United States Shipping Board under Section 21 of the Shipping Act 1916 (U. S. Code, Title 46, Sec. 820), reading as follows:

"DEPARTMENT OF COMMERCE,

Office of the Secretary,

Washington.

In the Matter of Filing Rates and Charges by Common Carriers by Water in Foreign Commerce.

ORDER.

It appearing, That full and complete information as to the rates and charges for or in connection with the transportation of certain property from continental United States to points in foreign countries by carriers by water in foreign commerce subject to the Shipping Act, 1916, is necessary to the proper administration of the regulatory provisions of said act;

It further appearing, That Isbrandtsen-Moller Company, Inc., is a common carrier by water in foreign commerce subject to the Shipping Act, 1916;

It is ordered, In pursuance of the powers conferred by Section 21 of the Shipping Act, 1916, that Isbrandtsen-Moller Company, Inc., be, and it is hereby notified and required to file with the Division of Regulation, United States Shipping Board Bureau, of this Department, at its office in Washington, D. C., on or before December 16, 1935, each port-to-port and transhipment rate charged and/or collected by it during the period from September 1, 1935, to November 12, 1935, both dates inclusive, for the transportation of property, except cargo loaded and carried in bulk without mark or count, from all points in continental United States of America to all points in foreign countries; indicated plainly as to each such rate, the place from and to which it was charged and/or collected, the effective date thereof, and the name, in alphabetic order, of each commodity moving thereunder; showing also

each terminal or other charge, privilege or facility, granted or allowed, and any rules or regulations which in anywise changed, affected, or determined any part of any such aforesaid rate, or the value of the service rendered to the consignor or consignee;

It is further ordered, That the aforesaid filing be in printed, typewritten, or mimeographed form, personally subscribed by an officer of said Isbrandtsen-Moller Company, Inc., who shall specify his title and verify the accuracy and completeness thereof under oath;

It is further ordered, That copy of this order be served upon said Isbrandtsen-Moller Company, Inc.

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

November 18, 1935."

Executive Order No. 6166 (U. S. Code, Title 5, Section 132), promulgated on June 10, 1933, and effective August 10, 1933, the validity of which is involved in so far as it attempts, in Section 12, to abolish the United States Shipping Board and to transfer its functions to the Department of Commerce reads, so far as material, as follows:

"Whereas section 16 of the act of March 3, 1933 (Public, No. 428, 47 Stat. 1517), provides for reorganizations within the executive branch of the Government; requires the President to investigate and determine what reorganizations are necessary to effectuate the purposes of the statute; and authorizes the President to make such reorganizations by Executive order; and

Whereas I have investigated the organization of all executive and administrative agencies of the Government and have determined that certain regroupings, consolidations, transfers and abolitions of executive agencies and functions thereof are necessary to accomplish the purposes of section 16;

Now, therefore, by virtue of the aforesaid authority, I do hereby order that:

* * * * * * *

The functions of the United States Shipping Board including those over and in respect to the United States Shipping Board Merchant Fleet Corporation are transferred to the Department of Commerce, and the United States Shipping Board is abolished."

The so-called Economy Act, the validity of which is involved, is the Act of Congress of June 30, 1932, Chapter 314, Title IV, Section 104, as amended March 3, 1933, Chapter 212, Title II, Section 16 (U. S. Code, Title 5, Secs. 124, *et seq.*). Section 401 of said Act under title "Declaration of policy" reads as follows:

"The Congress hereby declares that a serious emergency exists by reason of the general economic depression; that it is imperative to reduce drastically governmental expenditures; and that such reduction may be accomplished in great measure by proceeding immediately under the provisions of this title.

Accordingly, the President shall investigate the present organization of all executive and administrative agencies of the Government and shall determine what changes therein are necessary to accomplish the following purposes:

(a) To reduce expenditures to the fullest extent consistent with the efficient operation of the Government;

(b) To increase the efficiency of the operations of the Government to the fullest extent practicable within the revenues;

(c) To group, coordinate, and consolidate executive and administrative agencies of the Government, as nearly as may be, according to major purposes;

(d) To reduce the number of such agencies by consolidating those having similar functions under a single head, and by abolishing such agencies and/or such functions thereof as may not be necessary for the efficient conduct of the Government;

(e) To eliminate overlapping and duplication of effort; and

(f) To segregate regulatory agencies and functions from those of an administrative and executive character."

Section 402 provides:

"When used in this subchapter, the term 'executive agency' means any commission, independent establishment, board, bureau, division, service, or office in the executive branch of the Government and, except as provided in section 126 of this title, includes the executive departments."

Section 403 provides:

"Whenever the President, after investigation, shall find and declare that any regrouping, consolidation, transfer, or abolition of any executive agency or agencies and/or the functions thereof is necessary to accomplish any of the purposes set forth in section 124 of this title, he may by Executive order—

(a) Transfer the whole or any part of any executive agency and/or the functions thereof to the jurisdiction and control of any other executive agency;

(b) Consolidate the functions vested in any executive agency; or

(c) Abolish the whole or any part of any executive agency and/or the functions thereof; and

(d) Designate and fix the name and functions of any consolidated activity or executive agency and the title, powers, and duties of its executive head; except that the President shall not have authority under this title to abolish or transfer an executive department and/or all the functions thereof."

Section 405(c) provides:

"All laws relating to any executive agency or function transferred or consolidated with any other execu-

tive agency or function under the provisions of this subchapter, shall, in so far as such laws are not inapplicable, remain in full force and effect, and shall be administered by the head of the executive agency to which the transfer is made or with which the consolidation is effected."

c. The date of the final decree sought to be reviewed is the 22nd day of May, 1936; and the date upon which the application for appeal is presented is the 22nd day of May, 1936.

The nature of the case and of the rulings of the District Court are such as to bring the case within the jurisdictional provisions above mentioned and relied on for the following reasons:

The appellant filed a bill of complaint in the District Court of the United States for the Southern District of New York and made application for an interlocutory injunction before said court convened under Section 31 of the Shipping Act 1916 (46 U. S. Code, Section 830) and under 26 U. S. Code, Sections 46 and 47), enjoining the enforcement of said order on the grounds, among others (1) that it was not the intent of Congress that the United States Shipping Board be abolished and its functions transferred to the defendant Department of Commerce; that it was the pupose of Congress in creating the Shipping Board to create an independent, regulatory board performing quasi-judicial and quasi-legislative functions; and that in passing the amended Economy Act of March 3, 1933, Congress did not intend that the powers of independent regulatory boards such as the Shipping Board be transferred to the executive branch of the government; (2) That Congress has not ratified the purported transfer of the functions of the United States Shipping Board to the defendant Department of Commerce; (3) that even if it

assumed that it was the intent of Congress that the functions of the Shipping Board be transferred to the defendant Department of Commerce, Congress is without authority under the Constitution to do so because the transfer of the regulatory functions of the Shipping Board to the Department of Commerce is not the intention of the well-established principle that the three branches of the Government be kept separate and distinct and because the purported transfer of the regulatory functions of the Shipping Board to the defendant Department of Commerce amounts to an unconstitutional delegation of legislative power; and (4) that the effect of the order of the defendant Roper of November 18, 1935, is to deprive complainant of fundamental rights guaranteed to it by the Constitution because said order deprives complainant of its authority without due process of law and because said order amounts to an unreasonable search and seizure within the meaning of the Fourth Amendment to the Constitution.

Dated, May 22, 1936.

THEODORE KIENDL,
Counsel for Appellant.

DAVIS, POLK, WARDWELL,
GARDINER & REED,
Of Counsel.

Filed June 1, 1936.